NO. 89-654

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

MARY ANN DEAN, Petitioner,

v.

DENISE E. JOHNSON, DOUGLAS C. DEAN,
MAURICE DEAN and EDNA DEAN, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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36 pp

QUESTION PRESENTED

In enacting the Federal Employees' Group Life Insurance Act, 5 U.S.C. Sections 8701-8716, did Congress intend that an insured husband's change of the designated beneficiary take precedence over a state divorce court's interim order, which order prohibits the husband from removing his wife as designated beneficiary during the pendency of their divorce suit?

LIST OF PARTIES

The parties named in the proceedings below were the petitioner, Mary Ann Dean, and the respondents, Denise E. Johnson, Douglas C. Dean, Maurice Dean, and Edna Dean.

Metropolitan Life Insurance Company was a defendant in the District Court, but was dismissed from this action, with the consent of all parties, after it paid into the Court's account all monies for which it was liable under the insurance contract in question.

Prior to the joinder of Metropolitan Life Insurance Company as a defendant, Aetna Life

Insurance Company was named as a defenfant. Aetna was dismissed from this action, and Metropolitan substituted in its stead, when the parties discovered that Aetna was not the underwriter company for the group life insurance plan at issue.

In the District Court, the United Services Automobile Association and the United States of America were both named as defendants, but neither was served with process, and these defendants never became parties to the suit. They were initially named under the misapprehension that they were in some fashion obligated to the petitioner or the named respondents; but it later appeared that they were not in any manner connected with the issues in this case.

Counsel for the petitioner has undertaken to notify all parties who were at any time named in the District Court concerning the filing of this petition.

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IN THE SUPREME COURT OF THE UNITED STATES

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MARY ANN DEAN, Petitioner,

v.

DENISE E. JOHNSON, DOUGLAS C. DEAN, MAURICE DEAN, and EDNA DEAN, Respondents.

The petitioner, Mary Ann Dean, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled proceeding on August 9, 1989.

OPINIONS BELOW

The opinion of the Court Of Appeals for the Tenth Circuit is reported at 881 F.2d 948, and is reprinted in the appendix hereto, p.18, **infra.**

The memorandum opinion of the United States District Court for the District of New Mexico (Mechem, D.J.) has not been reported. It is reprinted in the appendix hereto, p. 24, **infra.**

JURISDICTION

JURISDICTION

This case was originally filed on Febraury 24, 1987, by the petitioner, Mary Ann Dean, in the Second Judicial District Court for Bernalillo County, State of New Mexico. Prior to answering that suit, on March 25, 1987, the respondents filed a petition for removal in the United States District Court for the District of New Mexico. The respondents invoked the District Court's jurisdiction under 28 U.S.C. Section 1332, and invoked their right to remove pursuant to 28 U.S.C. Section 1441.

On October 28, 1987, the United States District Court, upon respondents' motion for summary judgment, entered its Memorandum Opinion and Order, denying petitioner Mary Ann Dean's request for declaratory relief.

On petitioner's appeal, the Tenth Circuit on August 9, 1989, entered an opinion and judgment affirming the District Court. No petition for rehearing was filed.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under

28 U.S.C. Section 1254 (1).

STATUTES INVOLVED

5 U.S.C. Section 8705(a) states, in pertinent part:

> The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:
>
> First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office .... For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

5 U.S.C. Section 8709(d)(I) states, in pertinent part:

> The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits shall supersede and preempt any law of any State or political sub-division thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

5 C.F.R. 870.901 (1986) states, in pertinent part:

(a) A designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office ...

...

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

STATEMENT OF THE CASE

The petitioner, Mary Ann Dean, was married to Chester Francis Dean, deceased, a federal employee. At the time of his death, Chester Francis Dean was insured by a policy of group life insurance, provided to him pursuant to the Federal Employees' Group Life Insurance Act, (FEGLIA). On the date of his death, Chester Francis Dean was the respondent in a divorce suit instituted by Mary Ann Dean; this divorce suit was filed in the Second Judicial District Court for Bernalillo County, State of New Mexico. Prior to Chester Francis Dean's death, the state domestic relations court had entered an interim order forbidding him to change the beneficiary on any life insurance

policy.

At the time the interim state order was entered, Chester Francis Dean already had purchased his FEGLI life insurance policy. Mary Ann Dean was his beneficiary under the policy. In disobedience to the state domestic relations court's order prohibiting a change of beneficiaries, Chester Francis Dean eliminated the petitioner as a beneficiary, and made the respondents, Denise E. Johnson, Douglas C. Dean, Maurice Dean and Edna Dean, the new beneficiaries.

Immediately after the death of Chester Francis Dean, Mary Ann Dean filed a petition in the New Mexico District Court, requesting that the state court issue an injunction staying any disbursement of FEGLI insurance proceeds, and seeking a declaratory judgment, declaring the petitioner to be the proper beneficiary of those proceeds. In seeking this relief, the petitioner founded her claim on the illegality, under New Mexico law, of Chester Francis Dean's change of beneficiaries. The state court entered an injunction, which restrained the new beneficiaries

from disposing of any proceeds which might come into their hands.

In her state court suit, the petitioner named Denise E. Johnson, Douglas C. Dean, Maurice Dean, Edna Dean, United Services Automobile Association, the United States Of America, and Metropolitan Life Insurance Company as defendants.

Prior to answering the petitioner's suit, the respondents Denise E. Johnson, Douglas C. Dean, Maurice Dean, and Edna Dean, invoked the diversity jurisdiction of the United States, and removed this case to the United States District Court for the District of New Mexico. The defendants United Services Automobile Association and the United States of America were never served in that suit; the defendant Metropolitan Life Insurance Company, which was the FEGLI plan underwriter, paid all of the proceeds of Chester Francis Dean's life policy into the District Court's account, and was thereupon dismissed from the suit with the consent of all parties.

After filing an answer in the District Court, the respondents moved for summary judgment on the

petitioner's claim to the insurance proceeds, arguing that the state domestic court's order was preempted by the language of the Federal Employees Group Life Insurance Act (5 U.S.C. Sections 8701-8716). Specifically, the respondents relied upon the phrasing of 5 U.S.C. Section 8709(d), (set forth above), which provides that the provisions of any contract under FEGLIA "shall supersede and preempt any law of any state or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions." The respondents also relied upon the Office of Personnel Management's regulatory interpretation of this statute, 5 C.F.R. 870.901, which provides that "a change of benficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted."

The petitioner opposed summary judgment, maintaining her superior right to the proceeds, and contending that the federal statutory scheme

relied upon by the respondents did not serve to legitimize tha actions of her deceased husband in violating the state court's order.

The District Court decided the issue in favor of the respondents, and dismissed Mary Ann Dean's claim on the proceeds of the policy, by determining that

> In prohibiting Chester Dean from changing the beneficiary on his FEGLI policy, the state domestic relations court purported to restrict Chester Dean's right to change beneficiaries at any time. The state court's orders directly conflicted with [the federal statutes and regulations in question]. There is, therefore, no basis upon which I can enforce the orders of the domestic relations court. No state action can limit the right of the insured under a FEGLI policy to name beneficiaries or change beneficiaries.

On appeal, the Tenth Circuit agreed with the District Court. In its opinion filed August 9, 1989, it found that FEGLIA and its accompanying regulations established a preemptive scheme for group life insurance policies for federal employees. In support of its conclusion, it cited to 5 U.S.C. 8705(a), which states that "... a designation, change, or cancellation of

beneficiary in a will or other document not so executed and filed [that is, not executed in accordance with statutory provisions] has no force and effect." It also relied upon a portion of 5 C.F.R. 870.901, which states that the insured's right to change his beneficiary "cannot be waived or restricted." It also relied upon the recent Eleventh Circuit case of O'Neal v. Gonzales, 839 F.2d 1437 (1988), and adopted the following language from that case:

> This language [of 5 U.S.C. Section 8705(a) and 5 C.F.R. 870.901] indicates that Congress intended to establish, for reasons of administrative convenience and for the benefit of designated beneficiaries, an inflexible rule that the beneficiary designated in accordance with the statute would receive the policy proceeds, regardless of other documents or the equities in a particular case. 839 F.2d at 1440

REASONS FOR GRANTING THE WRIT

The Tenth Circuit's opinion, which found a preemptive scheme to inhere in the Federal Employees Group Life Insurance Act, substantially obstructs the power of the states to protect the well being of divorce litigants, in those domestic cases where one of the parties is insured under the Act. The language of FEGLIA does not reveal such a preemptive scheme. The opinion of the Tenth Circuit therefore creates a conflict between state and federal authority where none need exist, and needlessly erodes the authority of state

courts in the area of domestic relations, which has traditionally been regarded as their domain.

This Court has recently reiterated the long established rule that, where the field that Congress is said to have preempted has been traditionally occupied by the States, it will start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless it was the clear and manifest purpose of Congress; Hillsborough County, Florida v. Automated Laboratories, Inc., 471 U.S. 707, 85 L.Ed. 2d 714, 105 S.Ct. 2371 (1985). The issue of matrimonial relations, including proerty relations between maried couples and parties in the process of divorce, has been consistently left to the control of the states. Premption should not be presumed absent a clear manifestation of federal intent to exclude state law provisions; Chicago And Northwest Transport Co. v. Kalo Brick And Tile Co., 450 U.S. 311, 67 L.Ed. 2d 258, 101 S.Ct. 1124 (1981).

The provision relied upon by the lower courts

do not evince a clear intent to preempt the domestic relations decisions of state tribunals. 5 U.S.C. Section 8705(a) basically provides that beneficiary designations not made in accordance with the prescribed method will not be honored. It does not address the issue encountered in this case, of whether or not a recent designation may be disregarded in favor of a prior designation, where the later designation is shown to have been made in violation of state law. Likewise, 5 U.S.C. Section 8705(a) states that the provisions of any FEGLI contract shall superseded and preempt any law of any state or political sub-division thereof, or any regulation issued thereunder, "which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions" (emphasis added). The presence of the highlighted phrase is of significance, because its deletion would result in a blanket proscription against any state law which purports to affect the operation of an FEGLI contract; but its conclusion creates a limitation. As that statute is drafted, in order for a state

law to suffer preemption, it must first conflict with contractual provisions which "relate to the nature or extent of coverage or benefits" and it must itself "relate to group life insurance." This latter qualification indicates that the state law must be directed at group life insurance as such. Thus, this language does not require preemption of a state court's order which incidentally affects the right of a particular individual to change beneficiaries under FEGLI. In this case, the state court's injunction prohibited Chester Francis Dean from changing beneficiaries under any policy of insurance, and was not directed at group life policies as such.

The conclusion that Congress intended preemption to operate in cases such as this arises primarily from the terms of 5 C.F.R. 870.901, which states that a change of beneficiary may be made at any time, and, most significantly, that the right to change beneficiaries "cannot be waived or restricted." The question therefore arises, whether or not the Office of Personnel Management (OPM), went beyond its authority, and

in substance enacted legislation of its own. 5 U.S.C. Section 8716(a) does not confer upon the agency a power to create policy of its own, but only to "prescribe regulations necessary to carry out the purposes of this chapter." An agency may not contradict Congress; neither may it exercise powers which Congress has not delegated to it; Ohio Manufacturers' Association v. City Of Akron, 628 F. Supp. 623 (N.D. Ohio 1986).

The Eleventh Circuit's recent decision in O'Neal v. Gonzales, 839 F.2d 1437, (1988) held that a preemptive scheme is indeed apparent in FEGLIA, and that its terms preempt any state law requirements, where a deceased insured contractually bound herself to name a particular person as beneficiary, but later covertly changed her designation, without notifying the other party to the contract. However, a different result has been reached by various state courts.

Carlson v. Carlson, 521 P.2d 1114, (Sup. Ct. Cal. 1974) is supportive of the petitioner's position. In that case, the California Supreme Court found that the right to designate a

beneficiary under FEGLIA was limited by state property law considerations. The decedent in that case designated his sons as his beneficiaries, but his widow claimed that she was entitled to half of the policy proceeds under California community property laws. Finding in her favor, the opinion holds that FEGLIA did not preempt the application of state community property laws; the final result was to place a portion of the insurance proceeds in the hands of a party other than a designated beneficiary.

In Roberts v. Roberts, 560 S.W.2d 438, (Ct. Civ. App. Tex. 1977), the decedent had named his second wife as sole beneficiary of his insurance proceeds, though a divorce decree had directed him to maintain his children by his first wife as sole beneficiaries under his FEGLI policy. The second wife argued vigorously "that the federal statute and regulations prescribe a method of designating a beneficiary to the exclusion of any other method," 560 S.W.2d 438, at 439. The Texas Court Of Civil Appeals rejected this argument, and imposed a constructive trust on the proceeds in

favor of the children, in order that the decedent's wrongful act might not bear fruit.

Likewise, in Barden v. Metropolitan Life Insurance Co., 254 S.E.2d 271, (Ct. App. N.C. 1979), certiorari denied, 42 L.Ed. 2d 800, it was held that where a deceased husband had agreed under the terms of a divorce settlement to maintain his first wife as his beneficiary under his FEGLI policy, his subsequent designation of his second wife as beneficiary was a nullity. In rejecting the claim that 5 U.S.C. Section 8705(a) required that the benficiary designation be given effect, the Barden opinion notes that "This portion of the statute provides the method whereby a beneficiary may be properly designated; it does not establish the right to designate a beneficiary," 254 S.E.2d 271, at 273.

By its opinion in this case, the Tenth Circuit has eroded the power of all state courts to make provision for the material welfare of litigants in domestic relations cases. In New Mexico, this power is established by a statute which allows that

In any proceeding for the dissolution of marriage, division of property, disposition of children or alimony, the court may make and enforce by attachment or otherwise an order to restrain the use or disposition of the property of either party ... as in its discretion may seem just and proper. Section 40-4-7 NMSA 1978, 1986 Replacement Pamphlet

This statute has been law in New Mexico since territorial times, and first appeared in New Mexico's Laws of 1901, Chapter 62, Section 27. It represents a power traditionally exercised by the states, and ought not be lightly destroyed under the guise of imposing uniformity, or for the sake of mere convenience of administration. Consideration of the question by this Court is imperative.

CONCLUSION

For the reasons set forth above, this petition for certiorari should be granted. If the petitioner is correct in contending that the FEGLIA does not establish a scheme of preemption which overrides any traditional state power in divorce cases, the cause should be remanded to the

District Court for appropriate resolution.

Respectfully submitted

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APPENDIX

(Containing the opinion issued in this case by the United States Court of Appeals for the Tenth Circuit, and the memorandum opinion of the United States District Court for the District of New Mexico.)

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT:

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MARY ANN DEAN, Plaintiff/Counter-Defendant/ Appellant, v. DENISE E. JOHNSON, DOUGLAS C. DEAN, MAURICE DEAN, EDNA DEAN, UNITED SERVICES AUTOMOBILE ASSOCIATION, and UNITED STATES OF AMERICA, Defendants/Counter-Claimants/ Appellees.	)	NO. 87-2787

Appeal from the United States District Court
For the District of New Mexico
D.C. No. 87-368M

Submitted on the Briefs:

Joseph William Reichert, Albuquerque, New Mexico, for Plaintiff/Counter-Defendant/Appellant.

G. Richard Mantlo, Albuquerque, New Mexico, for Defendants/Counter-Claimants/Appellees.

Before MOORE, ANDERSON, and BRORBY, Circuit Judges.

MOORE, Circuit Judge

The single issue in this appeal is whether an insured's change of beneficiary under a Federal Employees' Group Life Insurance Policy (FEGLI) takes precedence over a state court order prohibiting a change of designated beneficiary. We affirm the district court's finding federal law controls this issue.

Mary Ann Dean instituted this action for a

declaratory judgment that she is entitled to the proceeds of her deceased husband's FEGLI policy although he filed a change of designated benficiary with his employer prior to his death. To support her position, Ms. Dean cited a prior interlocutory order issued by a domestic relations judge in her state divorce action which, she claimed, nullified the filed change of beneficiary form. The order prohibited the parties from changing the names of any beneficiaries under any of the couple's insurance policies and ordered them to undo any changes made since their separation. While the order remained in effect, Chester Dean changed the designated beneficiary of the policy.

The following year, Mr. Dean died in an automobile accident. Ms. Dean claimed the proceeds of the FEGLI policy, contending the Federal Employees' Group Life Insurance Act, 5 U.S.C. Sections 8701-8716, (FEGLIA) does not preempt valid state court orders in divorce proceedings. Alternatively, since the premiums had been paid out of community property, she maintained she

should be entitled to the proceeds.

We agree with the district court that FEGLIA and its accompanying regulations establish a preemptive scheme for group life insurance policies for federal employees. This case is similar to one recently decided in the Eleventh Circuit. In O'Neal v. Gonzales, 839 F.2d 1437 (11th Cir. 1988), two insured federal employees agreed to name each other as beneficiary of their respective FEGLI policies as a means of ensuring that the mortgage to their jointly owned house would continue to be paid. Subsequently, without informing the other, one of the parties changed the designated beneficiary naming an aunt notwithstanding their contract. Upon the death of the insured, decedent's aunt and plaintiff claimed the proceeds. Despite the harshness of the result, the Eleventh Circuit found Section 8705(a) (Footnote 1) and corresponding regulation, 5 C.F.R. 870.901 (1986) (Footnote 2), precluded Ms. O'Neal's claiming all of the proceeds. Citing Metropolitan Life Ins. Co. v. McShan, 577 F. Supp. 165 (N.D. Cal. 1983), and Knowles v. Metropolitan

Life Ins. Co., 514 F. Supp. 515 (N.D. Ga. 1981), the Eleventh Circuit concluded the language and intent of FEGLIA are clear. "This language indicates that Congress intended to establish, for reasons of administrative convenience and for the benefit of designated beneficiaries, an inflexible rule that the beneficiary designated in accordance with the statute would receive the policy proceeds, regardless of other documents or the equities in a particular case." 839 F.2d at 1440. (Footnote 3)

No facts or circumstances distinguiish this case from the cited precedent despite Ms. Dean's arguments to the contrary. The state domestic relations court order ostensibly restricts the federal insured's right to designate a beneficiary and thus cannot be valid under FEGLIA. We therefore AFFIRM the order of the district court granting summary judgment in favor of decedent's parents and children.

FOOTNOTES:

1. Section 8705(a) states in part:

> The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death .... For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

2. Section 870.901 states in part:

> (a) A designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office ....
>
> ....
>
> (e) A change of beneficiary may be made at any time and without the knowledge or consent of the prevvious beneficiary. This right cannot be waived or restricted.

3. The court also cited S. Rep. No. 1064, 89th Cong., 2d Sess. 2, reprinted in 1966 U.S. Code Cong. & Admin. News 2070, 2071.

4. We do not imply, however, Mr. Dean could not have been subjected to the contempt powers of the dometic court during his lifetime. That court's power to alter federal law is the only question we decide in this case.

THE MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

MARY ANN DEAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 87-368-M
	)	Civil
DENISE E. JOHNSON, ET AL.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION
AND
ORDER

This matter came on for consideration on the respondent's motion for summary judgment. Having considered the motion, the response thereto, and being otherwise fully advvised in the premises, I find that the motion is well taken and it will be granted.

Background

The petitioner Mary Ann Dean and Chester Francis Dean were married on June 4, 1976. The respondents Edna Dean and Maurice Dean are Chester Dean's mother and father. The respondents Denise Johnson and Douglas Dean are Chester Dean's children from a previous marriage.

During his marriage to Mary Ann Dean, Chester Dean was insured by Metropolitan Life Insurance Company under a Fderal Employees Group Life Insurance (FEGLI) policy. During their marriage, the policy premiums were paid from community funds.

On February 17, 1986, Mary Ann Dean filed for divorce from Chester Dean in the District Court of Bernalillo County, New Mexico. On June 5, 1986, the domestic relations judge entered an interlocutory order which required the parties to refrain from changing the beneficiary under any insurance policy and ordering them to undo any changes made since their separation. A second order, issued on August 26, 1986, enjoined the

parties from changing the beneficiaries under any existing life insurance policies.

As of July 3, 1986, Mary Ann Dean was the named beneficiary under Chester Dean's FEGLI policy. However, on October 16, 1986, Chester Dean filed with his employer a signed and witnessed Designation of Beneficiary form designating Denise Johnson, Douglas Dean, Maurice Dean and Edna Dean as beneficiaries under the policy.

On February 2, 1987, Chester Dean died in an automobile accident. At the time of his death, the FEGLI policy was still in effect. The Designation of Beneficiary form naming Chester's parents and children as beneficiarries was the only such form on file with his employment office.

Mary Ann Dean filed this declaratory judgment action, claiming she is entitled to the proceeds of the FEGLI policy because the state domestic relations judge ordered the parties to maintain existing life insurance policies as they were before Chester and Mary Ann separated. She alleges that Chester's change of beneficiaries violated the state court order and therefore had

no effect. She also claims she is entitled to the policy proceeds because the premiums were paid from community funds, making the proceeds community property.

Discussion

The FEGLI Act (5 U.S.C. Sections 8701-8716) (FEGLIA) governs the purchase of group life insurance policies for federal employees, like Chester Dean. If a FEGLIA policy includes a named beneficiary, the proceeds of the policy go to him or her at the death of the insured:

> (a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:
>
> First, to the beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office .... For this purpose, a designation, change, or cancellation of a beneficiary in a will or other document not so executed and filed has no force or effect.

5 U.S.C. Section 8705(a).

Congress intended further that no state law or other state action would be allowed to limit the right of the insured to designate or re-designate

the beneficiary:

(d) (I) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political sub-division thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

5 U.S.C. 8709 (d) (I).

The Office of Personnel Management (OPM), authorized to promulgate regulations necessary to carry out the purposes of FEGLIA (see 5 U.S.C. Section 8716), established the following regulation:

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

5 C.F.R. 870.901(e) (emphasis added).

Federal statutes and regulations preempt state laws or other state action with which they conflict. Fidelity Federal Savings & Loan Ass'n v. De La Cuesto, 458 U.S. 141 (1982).

In prohibiting Chester Dean from changing the beneficiary on his FEGLI policy, the state domestic relations court purported to restrict

Chester Dean's right to change beneficiaries at any time. The state court's orders directly conflicted with the above federal statutes and regulation. There is, therefore, no basis upon which I can enforce the orders of the domestic relations court. No state action can limit the right of the insured under a FEGLI policy to name beneficiaries or change beneficiaries. O'Neal v. Gonzales, 653 F. Supp. 719 (D..Fla. 1987); Metropolitan Life Ins. Co. v. McShan, 577 F. Supp. 165 (N.D. Cal. 1983); McGovern v. Broadstreet, 720 P.2d 589 (Colo. App. 1985); Estate of Hanley v. Andresen, 693 P.2d 198 (Wash. App. 1984). The cases cited by the petitioner are either inapposite or do not take into account 5 C.F.R. 870.901(e).

Moreover, Mary Ann Dean has no right to the proceeds of the FEGLI policy due to the fact that the premiums were paid with community funds from her marriage to Chester Dean. First, in New Mexico the ownership of a policy does not determine the ownership of the proceeds of the policy. Barela v. Barela, 95 N.M. 207, 619 P.2d

1251 (Ct. App. 1980). Even if the policy itself has become community property, this fact has no effect on the right of the designated beneficiary to the proceeds. Id. Second, Congress clearly intended to prevent any interference with the insured's choice of beneficiary. In view of this, it makes no sense for a court to "enforce the insured's choice of beneficiary" with one hand and with the other take away that choice via state community property law:

> It must be assumed that the federal provisions regarding designation of beneficiaries were intended to confer on the insured more than the right to do a meaningless act. If the proceeds are to go to someone other than the designated beneficiary, the act of so designating serves no purpose.

Metropolitan Life Ins., supra at 168.

Under these circumstances, I have no choice but to grant summary judgment in favor of the respondents. In accordance with express federal policy, Chester Dean's chopice of beneficiary will not be disturbed. Now, Therefore,

IT IS ORDERED that the motion for summary judgment of respondents shall be, and hereby is, granted and petitioner's complaint and

its causes of action shall be, and hereby are, dismissed on the merits.

s/ E. L. Mechem
SENIOR UNITED STATES DISTRICT JUDGE

No. 89-654

(2)

In The

Supreme Court of the United States

October Term, 1989

MARY ANN DEAN,
Petitioner,

v.

DENISE E. JOHNSON, DOUGLAS C. DEAN,
MAURICE DEAN and EDNA DEAN,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED

Whether an insured's change of beneficiary under a Federal Employee's Group Life Insurance Policy takes precedence over a state court order prohibiting a change of designated beneficiary.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court below are accurately set forth by Petitioner.

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The Tenth Circuit Court's Opinion, Which Found A Preemptive Scheme In The Federal Employees Group Life Insurance Act, Is Consistent With All Of The Federal Court Cases That Have Addressed This Issue Since The Act Was Amended In 1967; With The Opinion Of The Supreme Court Of The United States Involving A Similar Act, The Servicemen's Group Life Insurance Act, And With The Laws Of The State Of New Mexico. Therefore, There Is No Reason For This Case To Be Reviewed By The Supreme Court Of The United States.

The Court generally will issue a Writ of Certiorari "only when there are special and important reasons therefore." Rule 17.1. Among those reasons are "[w]hen a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort..." and when a federal court of appeals "has decided a federal question in a way in conflict with applicable decisions of this Court." Rule 17.1(a) and (c).

A. The Tenth Circuit Court's Decision In This Case Is In Conformity With All Of The Federal Courts That Have Addressed The Question As To The Strict Enforcement Or The Preemptive Nature Of The Designation Of Beneficiary Provisions Of The FEGLIA.

Prior to the decision of the Tenth Circuit in this case, three other Circuit Courts had reached similar results, the Second, Sixth and Eleventh Circuits. *Huff v. Metropolitan Life Insurance Company*, 675 F.2d 119 (6th Cir. 1982); *O'Neal v. Gonzalez*, 839 F.2d 1439 (11th Cir. 1988) and *Metropolitan Life Insurance Company v. Manning*, 568 F.2d 922 (2nd Cir. 1977). These cases were all decided after *Sears v. Austin*, 292 F.2d 690 (9th Cir.), *cert. denied*, 368 U.S. 929 (1961). The *Sears* case found that strict compliance with the designation of beneficiary provisions was not required by the Federal Employee Group Life Insurance Act (FEGLIA) and precipitated a 1966 amendment to what is now 5 U.S.C. Section 8705(a). This 1966 amendment was specifically intended by Congress to prevent future decisions similar to the *Sears* decision by adding to the second paragraph of that section the sentence, "For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force and effect." Pub. L. 89-373, 80 Stat. 78 (1966). Since 1966 the Federal District Courts addressing questions concerning the designation of

beneficiaries under the FEGLIA have all reached similar results. *Metropolitan Life Insurance Company v. McShan*, 577 F. Supp. 165 (N.D. Cal. 1983); *Knowles v. Metropolitan Life Insurance Co.*, 514 F. Supp. 515 (N.D. Ga. 1981); *Adams v. Macy*, 314 F. Supp. 399 (Md. 1970); *Pekonen v. Edgington*, 298 F. Supp. 158 (E.D. Ca. 1969). The *Knowles* and *McShan* cases involved preemption of court orders in divorce cases similar to the instant case.

B. The Tenth Circuit Court's Opinion Is In Conformity With This Court's Opinion Intepreting Congress' Preemptive Intent Of An Act Closely Analogous With The FEGLIA, And Is In Conformity With The Express Intent Of Congress

The Tenth Circuit's decision is also in harmony with the result this Court reached in *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S. Ct. 49, 70. L.Ed.2d 39 (1981). *Ridgeway* involved a claim on a Servicemen's Group Life Insurance Act (SGLIA) Policy based on a Maine divorce decree under circumstances similar to the present case. The provisions of the SGLIA are similar to those of the FEGLIA, and the SGLIA has been compared to the FEGLIA in interpreting the intent of Congress with regard to the designation of beneficiary section of the SGLIA. *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969). In analyzing the FEGLIA, the Court in *Stribling* stated at page 1354:

> The explicit language employed in the amendment to 5 U.S.C. Section 8705(a) and the Senate Report appertaining thereto makes it abundantly clear that Congress intended the beneficiary designation provisions of the Federal Employee's Group Life Insurance Act to be strictly construed ....
>
> An analysis of the legislative report to the amendment of 5 U.S.C. Section 8705(a) conclusively shows that Congress' departure from the liberal policy of judicial construction typified by the *Sears* decision was motivated by the compelling and very practical objective to avoid thrusting upon the private insurance carriers undue administrative burdens. As stated in the Senate Report to the 1967 amendment of Section 8705(a): "[T]he precedent established in [the *Sears*] case could, if generally followed, result in administrative difficulties for the Civil Service Commission and the insurance companies and, more important, seriously delay paying insurance benefits to survivors of Federal employees." S.Rep. No. 1064 to H.R. 432, *supra* at p. 2071.

Based on its analogy with the FEGLIA the *Stribling* Court found that because the provisions of the SGLIA were so similar to the FEGLIA, Congress intended that the designation of beneficiary section of the SGLIA to be strictly followed.

In *Ridgeway v. Ridgeway, supra*, this Court confirmed the result of the Eighth Circuit Court's decision in *Stribling* by holding that the insured's beneficiary designation under the SGLIA policy prevailed over a constructive trust imposed upon the policy proceeds by the state court. Since the SGLIA and the FEGLIA are so similar in purpose, intent and construction, it is clear that the Tenth Circuit

Court's decision in this case is in complete harmony with the *Ridgeway* decision. The controlling provisions of the two acts are strikingly similar. Both acts direct the administering agent to purchase coverage from one or more qualified commercial insurers (38 U.S.C. Section 766 and 5 U.S.C. Section 8709(a)); Coverage under both programs operate on a presumptive enrollment basis and premiums are withheld from the insured's pay unless coverage is expressly denied (38 U.S.C. Sections 767(a) and 769(a) and 5 U.S.C. Section 8702); Congress subsidizes both programs (38 U.S.C. Sections 769(b) and (d)(1) and 5 U.S.C. 8708); Both acts established a specified order of precedence for policy beneficiaries with the policy proceeds to be paid first to the beneficiary or beneficiaries as the insured may designate by an appropriately filed writing received prior to death and if there be no such designation the proceeds then go to the widow or widower etc. (38 U.S.C. Sections 770 and 5 U.S.C. Section 8705(a)) and, pursuant to the rule making authority granted in the acts, the regulatory agencies, the Veterans Administration (VA) for the SGLIA and the Office of Personnel Management (OPM) for the FEGLIA, promulgated administrative regulations.

The applicable regulations for the two acts are also similar. The regulations issued by the VA for administration of the SGLIA provide that the insured "may designate any person, firm, corporation or

legal entity" as a policy beneficiary; that such "designation or change of beneficiary . . . will take effect only if it is in writing, signed by the insured and received [by the appropriate office] prior to the death of the insured", that a change of beneficiary "may be made at any time and without the knowledge or consent of the previous beneficiary" and that "[n]o change or cancellation of beneficiary ... in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office." 38 CFR Section 9.16(a),(d),(e),(f). The regulations issued by OPM for administration of the FEGLIA provide that "A designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office ... before the death of the insured"; that "[a] change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary", and that the right to change a beneficiary can not be waived or restricted. 5 CFR Section 870.901 (a) and (e).

Although the issue as to whether the regulations issued by the VA were unreasonable, unauthorized or inconsistent with the SGLIA was not before this Court in *Ridgeway*, this Court left no doubt that such a contention would not be supportable. [1] This Court held that

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1. *Ridgeway v. Ridgeway*, 454 U.S. 46 at 57 reads in part: "There has been no suggestion that these regulations are unreasonable, unauthorized, or inconsistent with the SGLIA and such a suggestion would not be supportable"

the SGLIA and federal regulations there under bestowed upon the service member an absolute right to designate the policy beneficiary and concluded that "the controlling provision of the SGLIA prevail over and displace inconsistent state law". *Ridgeway. supra* at U.S.60.

The preemptive intent of Congress is more evident in the FEGLIA than in the SGLIA since the provision in the program directing that the beneficiary designation must be in writing and filed with the employing office prior to death and that designations not so filed have no force and effect are prescribed by statute rather than regulation as is the case with the SGLIA program. 5 U.S.C. Section 8705(a); 38 CFR Sections 9.16(d) and (e).

Petitioner's argument that 5 U.S.C. Section 8709 (d)(1) only preempts a state from enacting any law with regard to group life insurance as a class of insurance and that therefore a state law would not be preempted if that law acted on an individual policy as opposed to all policies as a group, ignores the plain import of the language used in the section that, "The provisions of any contract under this chapter which relates to . . . benefits (including payments with respect to benefits) shall supersede or preempt *any* law of any state or political sub-division thereof . . . which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions". (emphasis added) This language leaves

no doubt that Congress intended that state law would be preempted if it is inconsistent with contractual provisions of the FEGLIA.

Petitioner's contention that OPM exceeded its authority when it promulgated regulation 870.901 overlooks the clear manifestation by Congress that a federal employee is to have an unfettered right to designate the beneficiary to his or her policy that is made available as a benefit of employment, evident in Sections 8705(a) and 8709(d)(1) of the FEGLIA and the legislation history to the Act as set forth in *Stribling, Supra.*

While it is true that in the field of domestic relations federal law has limited application, in such cases this Court has not hesitated under the Supremacy Clause , U.S. Constitution Article VI cl. 2, to protect the rights and expectancies created under federal law against the operation of state law, or to prevent the frustration and erosion of the congressional policy. *Ridgeway v. Ridgeway, supra*; *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed. 2d 589, (1981); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S.Ct 802, 59 L.Ed. 2d 1, (1979); *In Re Burris*, 136 U.S. 586, 10 S.Ct. 850, 34 L.Ed. 2d 500 (1980) *Free v. Bland*, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed. 2d 180 (1962); *Wissner v. Wissner*, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950); *Yiatchos v. Yiatchos*, 376 U.S. 306, 84 S.Ct. 742, 11 L.Ed. 2d 742, (1964); *McCune v. Essig*, 199 U.S. 382 (1905).

C. The Opinion Of The Tenth Circuit Court Is Also Supportable Under Existing New Mexico Law.

Payment of the proceeds to the designated beneficiaries in this case is also supported by New Mexico Law. New Mexico has found insurance policies to be a specialized form of property. The valid mode of disposition of the proceeds therefrom is by designation of the beneficiary who will receive them on the happening of a stated event. *Harris v. Harris*, 83 N.M. 441, 493 P.2d 407 (1972). *Barela v. Barela*, 92 N.M. 207, 619 P.2d 1251 (Ct. App. 1980). With regard to group life insurance policies, this case law has been codified in 59A-21-17 N.M.S.A. 1978, which reads:

> Group life insurance shall contain in substance a provision that any sum becoming due by the death of the person insured shall be payable to the beneficiary designated by the person insured.

Even the Petitioner's prayer for the impression of a constructive trust on the proceeds of the policy would probably not be granted under New Mexico law since the order issued by the state district court which restricted the Decedent from changing the beneficiary to his insurance policies was an interlocutory order that was provisional and preliminary in nature. 47 Am. Jur. 2nd Judgments, Section 1053. Upon the Decedent's death, the divorce action became moot and the Divorce Court lost jurisdiction. *Romine v. Romine*, 100 N.M. 403, 671 P.2d 651 (1983).

While no New Mexico case can be found in point, in *Dougherty v. Dougherty*, 167 P.2d 467 (Sup. Ct. Wa. 1946) the Washington Supreme Court held that an interlocutory order vesting title to certain real and personal property in one of the parties became a nullity as of the date of death of one of the parties. In the instant case, upon the death of the Decedent, the divorce action became a non-suit. The general rule is that in the absence of statute, a dismissal, discontinuance or non-suit leaves the situation as if the suit had never been filed and carries down with it previous rulings and orders in the case. 11 ALR 2d 1411.

D. The Cases Cited In Support Of Petitioner's Position Do Not Support A Finding Contrary To Those Of The Tenth Circuit Court.

The cases cited by Petitioner as supportive of her position are by far in the minority and are easily distinguishable from the instant case. Petitioners characterization of *Roberts v. Roberts*, 560 S.W.2d 438 (Tex. 1977) as being very much in point is incorrect. The *Roberts* court found that as the designated beneficiary the appellant was, as a matter of law, entitled to the proceeds of the policy. While the *Roberts* Court did uphold imposition of a constructive trust in the children, it did so only after assuming that the appellant conceded that the constructive trust could be and was a valid exercise

of the trial court's power and authority under state law, since on appeal the appellant did not attack or challenge the validity of the constructive trust created by the trial court. *Id.* at 439. Since the validity of the constructive trust was never challenged, that question was never reached by the Court. If the Court in *Roberts* had reached the constructive trust question it may well have come up with the well reasoned result obtained in *Metropolitan Life Insurance Company v. McShan, supra* which held that under the preemptive scheme of the FEGLIA, a court could not impose a constructive trust on the proceeds.

Carlson v. Carlson, 521 P.2d 1114 (Cal. 1974) cited by Petitioner involves a claim by a widow to one half of the proceeds from a FEGLI policy under the community property laws of the state of California. The Court found that the state community property laws applied and that one half of the proceeds of the policy belonged to the widow as community property. The position taken in *Carlson* concerning a community property interest in policy proceeds has been rejected by New Mexico. *Barela v. Barela, supra.*,

As with the other cases cited by Petitioner, *Borden v. Metropolitan Life Insurance Company*, 254 S.E.2d 271 (Ct. App. N.C. 1979) does not aid the Petitioners claim. This case is easily distinguishable from the instant case since it involves a separation agree-

ment entered into by the insured as part of a divorce decree wherein the insured contracted to transfer all of the incidents of ownership, including the right to designate beneficiaries, to his first wife and to keep the policy in effect. The court found that the right to designate the beneficiary was established between the insured and the insurance company, rather than by federal statute, and since the court nor counsel in that case could find no statute making the right to designate the beneficiary a non-assignable right the insured could contract away that right.

Apparently the *Borden* Court was not appraised of 5 CFR 870.901(e) promulgated by OPM under the authority vested in it by the FEGLIA which carries with it the force and effect of federal statute. *Fidelity Federal Savings and Loan Association v. De la Cuesta,* 458 U.S. 141, 102 S. Ct. 3014, 73 L. Ed.2d 664(1982). 5 CFR 870.901(e) reads in part as follows:

> A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. *This right cannot be waived or restricted.* (emphasis added)

In fact none of the cases cited by the Petitioner address the affect of 5 CFR 870.901(e) and to the extent that these decisions rest on applying state law over federal law, the decisions are in error and should not be followed.

CONCLUSION

The Federal Courts have consistently interpreted the designation of beneficiary portion of the FEGLIA as preemptive to state law and required strict compliance with the designator of beneficiary provisions. Such interpretation is in conformity with prior ruling of this Court concerning the designation of beneficiaries under the SGLIA, an act that compares favorably with the FEGLIA, and is in accordance with the intent of Congress when it amended the FEGLIA in 1967. Such an interpretation is also consistent with New Mexico case law and statutes concerning group life insurance. Therefore, the Tenth Circuit's opinion in this matter being consistent and not in conflict with federal case law, Congress' intent and New Mexico law, the Writ of Certiorari should not be granted.

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